Trade Facts

Critical Assessment of the United States Trade Representative www.house.gov/levin
September 30, 2004

A Dose of Real-ity

in U.S. Trade With China

> *"This Administration's trade enforcement strategy is simple: we are focused not on process, but on producing real results that create opportunities for American workers, farmers and companies."* Robert B. Zoellick, U.S. Trade Representative
>
> *2003 was "a year in which China's WTO implementation efforts lost a significant amount of momentum."* Charles Freeman, Assistant USTR for China

Overview

✓ In the last twelve months, U.S. exports to China grew to $33 billion, more than double the level of 2001. Since President Bush took office, the U.S. has exported nearly $90 billion in goods and services to China, making it one of the fastest-growing export markets in U.S. history.

REALITY CHECK:** **Since 2001, the US trade deficit with China has jumped about 50% -- from $83 billion to over $120 billion. In 2004, the U.S. trade deficit with China is on pace to set a new record of over $150 billion. Sixty percent of China's increased import penetration of the U.S. market for manufactured goods displaced domestic U.S. producers' share — equivalent to a $31 billion loss in U.S. domestic production. Meanwhile, the U.S. share of China's total imports has fallen by about 50% since 1998.

✓ In July 2004, the U.S. and China successfully resolved a WTO dispute regarding China's tax refund policy for semiconductors, a market worth $2 billion to American manufacturers and workers.

REALITY CHECK:** **After three years of inaction, the Bush Administration finally filed this open-and-shut case in the WTO. More importantly, the Bush Administration's failure to use available tools to pressure China to comply with its WTO obligations in the critical first years of China's WTO membership has allowed a culture of non-compliance to emerge there. USTR has itself admitted that 2003 was "a year in which China's WTO implementation efforts lost a significant amount of momentum." [Assistant USTR for China, Charles Freeman, Testimony to the US-China Economic and Security Review Commission, February 2004]

✓ The U.S. exercised its rights to impose safeguards against Chinese imports to protect U.S. textile workers making products such as robes, undergarments, and knit fabric.

REALITY CHECK:** **The Bush Administration waited 17 months to issue regulations for the special China textiles safeguard. When finally issued, the regulations included numerous restrictions not required by the WTO that limited the effectiveness of the safeguard. The Bush Administration has yet to self-initiate a safeguard action despite studies by the World Bank and other independent experts that in the absence of action, a wave of imports from China will cause massive lay-offs in the United States and in numerous other countries. Moreover,

President Bush has denied relief under the broader China safeguard to every single U.S. industry found by the independent ITC to be injured by import surges from China.

✓ In four years, this Administration has imposed nearly as many antidumping orders against unfair imports from China as the previous Administration imposed in eight years.

REALITY CHECK: Antidumping cases are filed by businesses, not the Bush Administration. The Bush Administration has no discretion <u>not</u> to enforce these orders. Taking credit for antidumping orders is like taking credit for judgments issued by the U.S. courts.

Real Results With China?

- **Semiconductors:** In July 2004, the U.S. and China reached an agreement to resolve a WTO dispute regarding China's tax refund policy for integrated circuits (semiconductors), a market worth $2 billion to American manufacturers and workers. The resolution will ensure non-discriminatory tax treatment for U.S. integrated circuits in China, the world's fastest growing semiconductor market. The U.S. had filed the first-ever WTO case against China in this dispute.

  REALITY CHECK: When politically convenient, USTR has argued that bringing WTO cases is "litigation for litigation's sake" and "economic isolationism." This case demonstrated that bringing a WTO case is an important source of leverage in helping to resolve a dispute. In fact, in almost 75% of cases filed in the WTO (as in this case), the case is settled before there is even need for a panel decision.

- **Problem-Solving at the JCCT:** At a recent meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT), the U.S. used leverage, serious discussions, and practical problem-solving to resolve seven potential WTO cases. This involved months of detailed work with Chinese officials in a host of ministries, culminating in an April 2004 meeting with Chinese Vice Premier Wu Yi. Issues resolved included:

  REALITY CHECK: The JCCT can be a useful forum for helping to address problems in China's WTO implementation. However, by itself, this forum has significant limitations. For example, in an August 2004 letter to Chinese government officials, USTR Zoellick and Secretary Veneman raised concerns about four areas where China had failed to live up to its April JCCT commitments.

  "Serious discussions" and "practical problem-solving" are important tools, but so is vigorous defense of U.S. rights under the WTO. The threat of a WTO case is a critical point of leverage and was a primary benefit of bringing China into the rules-based WTO system. Yet, the Bush Administration has been timid in asserting U.S. rights in the WTO --- while the Clinton Administration filed on average 11 WTO cases per year, the Bush Administration has significantly scaled back US enforcement efforts, bringing only about 3 WTO cases per year.

  - **Intellectual Property:** China presented a detailed action plan to address the piracy and counterfeiting of American ideas and innovations, particularly through increased criminal penalties for violators.

    REALITY CHECK: China has undertaken "detailed action plans" on IPR before – only to frustrate their implementation later. Claiming victory prematurely is unwise – it sends a signal to China that the issue has been resolved, when continued vigilance is needed. The reality is that piracy in China continues to be a massive and rampant problem – the International Intellectual Property Alliance estimates that the 2003 Chinese piracy level for movies was 95%, for records and music was 90%, for software was over 90%, and total piracy-based losses were $2.5 billion.

On September 16, the American Chamber of Commerce in China issued a report stating with regard to intellectual property rights in China, "the situation is worsening. More than three-quarters of AmCham members surveyed said they were negatively affected by IPR infringement. To date, China's administrative measures to punish IPR violators have fallen short of the international TRIPS standard requiring WTO members to have effective enforcement to act as a deterrent."

- **Trading Rights:** China agreed to implement its WTO trading rights obligations six months ahead of schedule, allowing U.S. firms to ship U.S. products to China without using local middlemen.

  REALITY CHECK: Once again, USTR's claim of victory is premature. While China passed legislation on trading rights, it has not fully implemented this legislation and will not do so until December 2004. By claiming victory prematurely, USTR has sent a signal to China that the issue is resolved, when continued vigilance is still needed.

- **Distribution Rights:** China agreed to provide distribution rights to U.S. companies by the end of 2004 and shared a draft of its implementing regulations, resolving concerns about full implementation of this important WTO commitment. This will allow U.S. firms to engage in wholesaling and retailing of U.S. products directly within China.

  REALITY CHECK: China was already required by its WTO accession agreement to provide distribution rights to US companies by the end of 2004, so this is hardly a victory. Once again, USTR's claim that China has "resolv[ed] concerns about full implementation" is premature. U.S. businesses realize that the work on implementation has only begun – Tom Gougarty, the Executive Director of the AmCham Shanghai stated on September 16, "Thorough and fair implementation of distribution rights, particularly after the December 11, 2004 deadline, will remain a top concern of American companies in the coming year."

- **Soybeans and Cotton:** As a result of U.S. problem-solving efforts, China has corrected problems in its tariff-rate quota system for bulk agricultural commodities and has relaxed market constraints in soybeans and cotton trade. U.S. exports of soybeans reached an all-time high in 2003 of $2.9 billion and cotton exports were $733 million, up 431 percent over 2002.

  REALITY CHECK: In late August, USTR and the Department of Agriculture were forced to write a letter to China's Ambassador urging that a new "Decree 73" not be enforced because it would interfere with U.S. exports of soybeans and other commodities to China. While China has given "assurances" to the United States, it remains to be seen if this will be enough.

- **Financial Services:** As a result of U.S. problem-solving efforts, China has reduced capital requirements for financial services and opened the auto financing sector to foreign competition.

  REALITY CHECK: As to the auto finance rules, a recent China Business Review article states "the implementing rules were not only two years late, but impose practical limitations, such as high capital requirements and caps on total lending." The U.S. China Business Council also notes, "Foreign bankers in China have faced many of the same problems plaguing foreign insurers: high capitalization requirements, lengthy licensing processes, and limitations on business scope."

- **Insurance:** China is in the process of changing its insurance regulations to make it easier for foreign insurance companies to do business there, as a result of U.S. pressure.

  REALITY CHECK: A recent China Business Review article states, "Insurance licensing remains an opaque process, with high capital requirements for setting up branches."

- **Textiles:** The U.S. exercised its rights to impose safeguards when import surges threaten U.S. production. In December 2003, Chinese imports of robes, bras, and knit fabric were limited under safeguards.

  REALITY CHECK: The Bush Administration waited 17 months to issue regulations for the special China textiles safeguard. When finally issued, the regulations included numerous restrictions not required by the WTO that limited the effectiveness of the safeguard. The Bush Administration has yet to self-initiate a safeguard action despite studies by the World Bank and other independent experts that in the absence of action, a wave of imports from China will cause massive lay-offs in the United States and in numerous other countries. Moreover, President Bush has denied relief under the broader China safeguard to every single U.S. industry found by the independent ITC to be injured by import surges from China.